

1 J. Mark Moore, Bar No. 180473
2 **SPIRO MOSS BARNES LLP**
3 11377 W. Olympic Blvd., Fifth Floor
4 Los Angeles, CA 90064
5 Telephone: (310) 235-2468
6 Facsimile: (310) 235-2456
7 mark@spiromoss.com

8 *Attorneys for Plaintiff Patrick McGee*

9 Eric A. Grover, Bar No. 136080
10 **KELLER GROVER LLP**
11 425 Second Street, Suite 500
12 San Francisco, CA 94107
13 Telephone: (415) 543-1305
14 Facsimile: (415) 543-7681
15 egrover@kellergrover.com

16 *Attorneys for Plaintiff Amber Tolley-McNerney*

17 **HANSON BRIDGETT MARCUS VLAHOS & RUDY, LLP**
18 **LAWRENCE M. CIRELLI - 114710**
19 **M. D. MOYE - 152871**
20 **GARNER K. WENG - 191462**
21 425 Market Street, 26th Floor
22 San Francisco, CA 94105
23 Telephone: (415) 777-3200
24 Facsimile: (415) 541-9366
25 E-mail: lcirelli@hansonbridgett.com
26 mmoye@hansonbridgett.com
27 gweng@hansonbridgett.com

28 *Attorneys for Defendant Ross Stores, Inc.*

Additional Counsel on signature page

19 **UNITED STATES DISTRICT COURT**
20 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

21 **PATRICK J. MCGEE and AMBER**
22 **TOLLEY-MCNERNEY, individually and**
23 **on behalf of all others similarly situated,**

24 **Plaintiff,**

25 **v.**

26 **ROSS STORES, INC., and DOES 1-10,**

27 **Defendants.**

No. C 06-07496 CRB
C 07-04503 CRB

CLASS ACTION

**STIPULATION REGARDING
CONSOLIDATION**

Date: December 21, 2007
Time: 10:00 a.m.
Courtroom: 8
Judge: Hon. Charles R. Breyer

1 Plaintiff PATRICK J. MCGEE (“Plaintiff McGee”), Plaintiff AMBER TOLLEY-
2 MCNERNEY (“Plaintiff Tolley-McNerney”), and Defendant ROSS STORES, INC.
3 (“Defendant”), by and through their respective counsel, hereby stipulate as follows:

4 WHEREAS, on December 6, 2006, Plaintiff McGee filed a class action in the U.S.
5 District Court for the Northern District of California against Defendant Ross Stores, Inc.
6 (“Defendant”) alleging on behalf of a nationwide class of consumers violations of the Fair and
7 Accurate Credit Transactions Act (“FACTA”), 15 U.S.C. § 1681c(g), which provides, in relevant
8 part, that “no person that accepts credit cards or debit cards for the transaction of business shall
9 print more than the last 5 digits of the card number or the expiration date upon any receipt
10 provided to the cardholder at the point of the sale or transaction”;

11 WHEREAS, on February 26, 2007, Plaintiff Tolley-McNerney filed a second action on
12 behalf of a nationwide class of consumers against Defendant in the District of Nevada that also
13 alleged violations of FACTA, *Tolley-McNerney v. Ross Stores, Inc.*, Case No. 3-07-CV-00090
14 LRH-(RAM) (D. Nev.)¹;

15 WHEREAS, on August 31, 2007, the *Tolley-McNerney* action was transferred to this
16 District;

17 WHEREAS, on October 2, 2007, the Court ruled that the *McGee* and *Tolley-McNerney*
18 actions were related pursuant to Civil Local Rule 3-12;

19 WHEREAS, on November 30, 2007, the Court granted Plaintiff McGee’s motion for class
20 certification, certifying a class of all individuals who were provided with an electronically-printed
21 credit card receipt at the point of a sale or transaction solely at the Defendant’s store located at
22 1400 Lincoln Boulevard, Venice, California, on which Defendant printed the card’s expiration

23 ¹ On May 21, 2007, Plaintiffs Patrick and Jeanne Stillmock filed a third class action in the
24 District of Maryland, *Stillmock v. Ross Stores, Inc.*, Case No. 1:07-CV-01344. That case was
25 subsequently transferred to this District. Because the *Stillmock* plaintiffs also alleged violations
26 of FACTA on behalf of a nationwide class of consumers against Defendant, the Court ordered
27 that the case be related to the *McGee* and *Tolley-McNerney* actions. *Stillmock v. Ross Stores*,
28 Case No. C 07-04809 CRB, *Order* (Dkt. No. 7) (N.D. Cal. Oct. 15, 2007). On November 21,
2007, the parties to the *Stillmock* action filed a stipulation of dismissal. For that reason, Plaintiffs
McGee and Tolley-McNerney and Defendant agree that the *Stillmock* plaintiffs need not be
parties to the instant stipulation.

1 date, but then stayed entering of an order regarding the motion;

2 WHEREAS, on November 30, 2007, the Court also ordered that all discovery in the
3 *McGee* action be limited to the issue of “willfulness” under the FACTA statute, and then
4 scheduled a hearing on summary judgment on the “willfulness” issue for May 2, 2007;

5 WHEREAS, Plaintiffs McGee and Tolley-McNerney believe that Plaintiff Tolley-
6 McNerney is not a member of the class certified by the Court;

7 WHEREAS, Plaintiff Tolley-McNerney intends to file her own motion for class
8 certification;

9 WHEREAS Plaintiffs McGee and Tolley-McNerney and Defendant nevertheless
10 recognize that both the *McGee* and *Tolley-McNerney* actions raise common questions of law and
11 fact regarding Defendant’s potential liability under FACTA, and recognize the potential for
12 duplicative efforts;

13 WHEREAS it is anticipated that most, if not all, of the discovery, documents, and
14 witnesses in both actions will be similar if not identical on the question of Defendant’s potential
15 liability under FACTA;

16 WHEREAS Plaintiffs McGee and Tolley-McNerney and Defendant recognize that this
17 Court has the inherent authority to join for hearing or trial any issues involving common
18 questions of law or fact pursuant to Rule 42(a) of Federal Rules of Civil Procedure;

19 WHEREAS Plaintiffs McGee and Tolley-McNerney and Defendant agree that the
20 consolidation of these actions on the question of Defendant’s potential liability under FACTA
21 would avoid unnecessary costs and/or delay to the Court and the parties;

22 WHEREAS Plaintiffs McGee and Tolley-McNerney, by and through their counsel, agree
23 that the consolidation of these actions on the question of Defendant’s potential liability under
24 FACTA would effectively serve the interests of justice by avoiding the substantial risk of
25 multiple actions and inconsistent findings, rulings, and verdicts;

26 WHEREAS Plaintiffs McGee and Tolley-McNerney and Defendant agree that
27 *Tolley-McNerney v. Ross Stores, Inc.*, Case No. 07-04503 CRB (N.D. Cal.), should be
28 consolidated into the earlier-filed *McGee v. Ross Stores, Inc.*, Case No. 06-07496 CRB (N.D.

1 Cal.), on the question of Defendant's potential liability under FACTA, and recognize that
2 consolidation for all purposes might be appropriate after the Court rules on Plaintiff McNerney's
3 motion for class certification.

4 **IT IS SO STIPULATED.**

5 DATED: December 10, 2007

SPIRO MOSS BARNES LLP

7
8 By: _____/s/
J. Mark Moore
Attorneys for Plaintiff Patrick J. McGee

9 DATED: December 10, 2007

KELLER GROVER LLP

11
12 By: _____/s/
Eric A. Grover
Attorneys for Plaintiff Amber Tolley-
13 McNerney

14
15 DATED: December 10, 2007

**HANSON BRIDGETT MARCUS VLAHOS
& RUDY, LLP**

17
18 By: _____/s/
M. D. MOYE
Attorneys for Defendant
19 ROSS STORES, INC.

1 *Additional counsel for Plaintiff Patrick J. McGee:*

2 Douglas A. Linde, Bar No. 217584
3 Chant Yedalian, Bar No. 222325
4 **THE LINDE LAW FIRM**
5 9000 Sunset Blvd, Suite 1025
6 Los Angeles, CA 90069
7 Tel: (310) 203-9333; Fax: (310) 203-9233
8 dal@lindelaw.net

9 *Additional counsel for Plaintiff Amber Tolley-McNerney:*

10 Mark R. Thierman, Bar No. 72913
11 **THIERMAN LAW FIRM**
12 7287 Lakeside Drive
13 Reno, NV 89511
14 Tel: (775) 284-1500; Fax: (775) 703-5029
15 laborlawyer@pacbell.net
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

GOOD CAUSE APPEARING, the Court hereby orders that the actions *McGee v. Ross Stores, Inc.*, Case No. 06-07496 CRB (N.D. Cal.), and *Tolley-McNerney v. Ross Stores, Inc.*, Case No. 07-04503 CRB (N.D. Cal.), are hereby consolidated on the question of Defendant Ross Stores, Inc.'s potential liability under the Fair and Accurate Transactions Act into the earlier-filed *McGee v. Ross Stores, Inc.*, Case No. 06-07496 CRB (N.D. Cal.).

IT IS SO ORDERED.

HONORABLE CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE